



## **FACTUAL HISTORY**

OWCP accepted that on November 27, 2010 appellant, then a 50-year-old lead security screener, sustained a lumbar sprain and left knee contusion when she slipped and fell in a parking lot, landing on both wrists and her left knee. She sought treatment in a hospital emergency room at the time of the injury. Appellant remained off work through March 15, 2011, worked full duty through March 18, 2011, again stopped work, then returned to work for four hours a day on April 30, 2011 in a light-duty capacity. She claimed compensation through December 31, 2011 for the remaining four hours a day.

Dr. Michael A. Glick, an attending osteopathic physician Board-certified in family practice, submitted reports commencing November 29, 2010. He noted that, before the November 27, 2010 slip and fall, appellant had a two-level L4-5 fusion due to a motor vehicle accident in 2005 and had a knee injury with an imaging study in January 2010. Dr. Glick diagnosed a left knee contusion and a lumbar strain. On January 28, 2011 he diagnosed lumbar and sacroiliac strains with possible radiculopathy.

Appellant was also followed by Dr. Brett Men-Muir, a Board-certified orthopedic surgeon. In a December 14, 2010 report, Dr. Men-Muir related her complaints of buttock pain to a November 27, 2010 slip and fall in which she struck her left knee and jarred her lumbar spine. He diagnosed left sacroiliitis and status arthrodesis. In a May 13, 2011 report, Dr. Men-Muir opined that appellant's symptoms were objectively referable to the left S1 joint and recommended a sacroiliac fusion.<sup>2</sup>

On June 5, 2011 OWCP obtained a second opinion report from Dr. Aubrey Swartz, a Board-certified orthopedic surgeon, noting findings on a May 17, 2011 examination. Dr. Swartz reviewed the medical record and statement of accepted facts provided by OWCP. He opined that appellant's sacroiliac symptoms were not related to the accepted November 27, 2010 injuries because a university study identified "slip and fall" patients as having a psychological dysfunction and not true sacroiliac pathology. Dr. Swartz stated that the effects of the November 27, 2010 slip and fall had ceased and attributed appellant's symptoms to the nonoccupational L4-5 fusion. He noted work restrictions limiting pulling, pushing and lifting to 10 pounds. Dr. Swartz noted that the restrictions would apply for one year. In a June 16, 2011 supplemental report, he opined that June 14, 2011 imaging studies showed a stable lumbar fusion unrelated to the accepted injuries.<sup>3</sup> Dr. Swartz concurred with Dr. Men-Muir that appellant required a left sacroiliac joint fusion.

In reports from August 19 to November 28, 2011, Dr. Glick noted worsening left sacroiliitis necessitating modified duty and periodic work absences. He stated that appellant was awaiting authorization for a left sacroiliac fusion.

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<sup>2</sup> Dr. Martin J. Arraiz, an attending Board-certified physiatrist, diagnosed left sacroiliitis and degenerative lumbar disc disease and administered a series of epidural and trigger point injections from April through November 2011.

<sup>3</sup> June 14, 2011 x-rays showed mild dextroscoliosis, rod and screw stabilization at L4-5 with minimal degenerative changes and minimal facet sclerosis, sacroiliac osteoarthritis. A June 14, 2011 magnetic resonance imaging (MRI) scan showed status post anterior-posterior L4-5 fusion without instability or acute disc herniation, osteophytes at the right L4-5 facet joint and mild facet arthropathy at L3-4.

In a November 3, 2011 addendum, Dr. Swartz opined that appellant required a left sacroiliac fusion due to a nonindustrial or preexisting condition and not to the accepted injuries.

By notice dated November 21, 2011, OWCP advised appellant that it proposed to terminate her wage-loss and medical compensation benefits as the accepted conditions had ceased without residuals. It accorded Dr. Swartz the weight of the medical evidence. OWCP afforded appellant 30 days to submit evidence or argument contesting the proposed termination.

In a December 3, 2011 letter, appellant contended that, prior to the accepted injuries, she had not consulted Dr. Men-Muir since July 2008 and that she did not have a torn left knee ligament, only a contusion in January 2010.

In December 19, 2011 reports, Dr. Glick diagnosed a chronic S1 strain. He found appellant able to perform modified duty from November 28, 2011 to January 5, 2012.

In a December 21, 2011 report, Dr. Men-Muir noted that appellant's buttock pain had returned after an April 13, 2011 epidural steroid injection, reiterating that the left sacroiliac fusion was warranted. He diagnosed a left S1 joint dysfunction, "work related." Dr. Men-Muir opined that all of appellant's "symptoms [were] coming from her left S1 joint." He recommended a left S1 joint fusion. Dr. Men-Muir restricted appellant to sedentary duty.

By decision dated January 19, 2012, OWCP terminated appellant's wage-loss and medical compensation benefits that day, based on Dr. Swartz' opinion that the accepted conditions had ceased.

### **LEGAL PRECEDENT**

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>4</sup> Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>5</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>6</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>7</sup>

Section 8123 of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary

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<sup>4</sup> *Bernadine P. Taylor*, 54 ECAB 342 (2003).

<sup>5</sup> *Id.*

<sup>6</sup> *Roger G. Payne*, 55 ECAB 535 (2004).

<sup>7</sup> *Pamela K. Guesford*, 53 ECAB 726 (2002).

shall appoint a third physician, who shall make an examination.<sup>8</sup> In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>9</sup>

### ANALYSIS

OWCP accepted that appellant sustained a lumbar strain and left knee contusion when she slipped and fell on November 27, 2010. Dr. Glick, an attending osteopath Board-certified in family practice, supported total or partial disability for work due to the accepted injuries through January 5, 2012. Dr. Men-Muir, an attending Board-certified orthopedic surgeon, submitted reports from December 14, 2010 to December 21, 2011 supporting that the November 27, 2010 incident caused a left sacroiliac joint dysfunction producing lumbar and radicular pain and necessitating a sacroiliac fusion.

OWCP referred appellant to Dr. Swartz, a Board-certified orthopedic surgeon, for a second opinion. In a June 5, 2011 report and two addenda, Dr. Swartz opined that her chronic lumbar pain was attributable only to the preexisting L4-5 fusion and was unrelated to the accepted injuries. He based this opinion on a university study characterizing sacroiliac pain in “slip and fall patients” as a psychologic dysfunction. Yet, Dr. Swartz stated on November 3, 2011 that he concurred with Dr. Men-Muir that appellant required a left sacroiliac joint fusion.

OWCP terminated appellant’s wage-loss and medical benefits effective January 19, 2012, based on the opinion of Dr. Swartz as the weight of the medical evidence. The Board finds that termination was improper as there was a conflict of medical opinion between Dr. Swartz, for the government and Dr. Men-Muir, for appellant, regarding the nature and extent of her injury-related disability. Dr. Swartz attributed appellant’s ongoing condition to a preexisting lumbar fusion, whereas Dr. Men-Muir explained that the objective sacroiliitis and need for surgery were related to the November 27, 2010 slip and fall. The statute provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination. OWCP did not do this. At the time of the termination, there was a conflict of medical opinion between Dr. Swartz and Dr. Men-Muir.<sup>10</sup>

On appeal, appellant asserts that the employing establishment pressured Dr. Swartz to find against her and that her condition worsened during OWCP’s referral process. As stated, OWCP’s January 19, 2012 decision terminating her wage-loss and medical compensation benefits will be reversed.

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<sup>8</sup> 5 U.S.C. § 8123; see *Charles S. Hamilton*, 52 ECAB 110 (2000).

<sup>9</sup> *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

<sup>10</sup> *Raymond W. Behrens*, 50 ECAB 221 (1999).

**CONCLUSION**

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss and medical compensation benefits effective January 19, 2012.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 19, 2012 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 14, 2012  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board